

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWIGHT R. SHELTON, JR.,

Petitioner,

v.

USDC NORTHERN ALABAMA,

Respondent.

No. 2:21-cv-02113-EFB (HC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner Dwight Shelton, currently incarcerated in Folsom State Prison, seeks a reduction to a consecutive federal sentence for time spent in federal custody through this petition for writ of habeas corpus under 28 U.S.C. § 2241. ECF No. 1. Petitioner filed the petition himself but is now represented by counsel. *Id.*; ECF No. 15. Respondent moves to dismiss the petition. ECF No. 13. For the reasons that follow, the court finds that the petition must be dismissed.

I. The Petition

Petitioner is serving a term of over 29 years in California state prison following convictions in Los Angeles Superior Court Case No. BA344533.¹ ECF No. 1 at 1. During his state incarceration, which began in 2010, petitioner was indicted in federal court (Northern

¹ The petition states that the state term is “25 years to life plus 4 years and 4 months” (ECF No. 1 at 1) but petitioner’s counsel corrects that information and asserts that the term is actually two consecutive determinate terms (25 years and 4 years, 4 months, totaling 29 years, 4 months). ECF No. 15 at 2, 9.

1 District of Alabama) and eventually pleaded guilty to bank fraud and identity theft. *Id.* at 2, 10.
2 On May 5, 2011, U.S. District Court Judge Sharon Blackburn sentenced petitioner to 17 months
3 for the bank fraud count, to be served concurrently with petitioner’s California sentence, and 12
4 months for the identity theft count, to be served consecutively to the state sentence. *Id.* at 8, 10-
5 11. Petitioner claims that he is due custody credit of 270 days against the 12-month federal
6 sentence for time spent in federal custody in connection with the bank fraud and identity theft
7 charges. *Id.* at 8.

8 Petitioner has previously made the same claim to the sentencing court in a motion brought
9 under 28 U.S.C. § 2255. ECF No. 13-1 at 32-34. Judge Blackburn rejected the claim as
10 improperly brought under § 2255. *Id.* at 32. She further ruled that “any habeas petition under §
11 2241 is premature and, when ripe, must be filed in the district of incarceration, not in the court of
12 conviction. *Once Shelton begins his federal sentence*, he must exhaust all BOP administrative
13 remedies before filing a § 2241 habeas petition in the federal district court[.]” *Id.* at 32-33
14 (emphasis added).

15 II. The Motion to Dismiss

16 Petitioner argues that he is entitled to a custody credit of 270 days against his 12-month
17 federal sentence for time he spent on loan from state authorities to the U.S. Marshal pursuant to a
18 writ of habeas corpus ad prosequendum to adjudicate the federal charges. The U.S. Attorney
19 makes a limited appearance on behalf of the named respondent, the U.S. District Court for the
20 Northern District of Alabama, because the United States does not currently have custody of
21 petitioner. ECF No. 13. Respondent, through the U.S. Attorney, argues that the instant petition
22 must be dismissed because the court lacks jurisdiction and petitioner’s claim is without merit. *Id.*
23 The court agrees with respondent on both counts.

24 Under Article III of the U.S. Constitution, federal courts have jurisdiction over cases and
25 controversies; thus, to bring a case in federal court, parties must present a live controversy, in
26 part, to protect agencies from “judicial interference until an administrative decision has been
27 formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Laboratories*
28 *v. Gardner*, 387 U.S. 136, 148-49 (1967), *abrogated on other grounds by Califano v. Sanders*,

1 430 U.S. 99 (1977). A claim is not yet ripe for judicial review – and thus may not be pursued in
2 federal court – if it involves “‘contingent future events that may not occur as anticipated, or
3 indeed may not occur at all.’” *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580-81
4 (1985)) (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532
5 (1984)).

6 Here, petitioner does not contend that his state sentence has concluded and the
7 consecutive federal sentence has begun. Rather, he is in state custody and his own filings show
8 that the earliest he may be released from state custody is 2023. ECF No. 15 at 9; *see generally* 18
9 U.S.C. § 3585(a) (“A sentence to a term of imprisonment commences on the date the defendant is
10 received in custody awaiting transportation to, or arrives voluntarily to commence service of
11 sentence at, the official detention facility at which the sentence is to be served.”). As Judge
12 Blackburn has already ruled, petitioner’s claim for a credit against the 12-month federal sentence
13 will not be ripe until that sentence commences.

14 In addition, the court is not persuaded by petitioner’s claim that he is due 270 days credit
15 against any of his sentences for time spent in federal custody on the bank fraud and identity theft
16 charges. The 270 days petitioner spent in *physical* federal custody under the writ of habeas
17 corpus ad prosequendum were *legally* spent in state custody – that is, petitioner’s state term
18 continued to run uninterrupted while he was “on loan” to the federal government for the federal
19 prosecution, and petitioner’s state sentence calculation worksheet reflects that uninterrupted
20 custody. ECF No. 15 at 9; *Thomas v. Brewer*, 923 F.2d 1361, 1367 (9th Cir. 1991) (holding that
21 a state prisoner brought before federal court for trial and sentencing under a writ of habeas corpus
22 ad prosequendum remained a state prisoner even while under the physical custody of federal
23 authorities and quoting with approval *Crawford v. Jackson*, 589 F.2d 693, 695 (D.C. Cir. 1978)
24 (“When an accused is transferred pursuant to a writ of habeas corpus ad prosequendum he is
25 considered to be ‘on loan’ to the federal authorities so that the sending state’s jurisdiction over the
26 accused continues uninterruptedly.”)).

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III. Order and Recommendation

It is thus hereby ORDERED that the Clerk of Court randomly assign a District Judge to this action. It is further RECOMMENDED that the District Judge grant respondent's February 11, 2022 motion to dismiss (ECF No. 13) and close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 2, 2022.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE